IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6996 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DAGRA (BHIL) MUKESH HARJIBHAI

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 6996 of 2001

MR NAGIN N GANDHI for Petitioner No. 1

MS HARSHA DEVANI, AGP for Respondents No. 1-2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 31/01/2002

ORAL JUDGEMENT

#. The petitioner applied for appointment to the post of Peon in the year 1994 in response to the public advertisement published by the Collector, Surendranagar.

The petitioner was ultimately selected for the said post and he was accordingly appointed by order dated 19.5.1995. However, within a period of one month, his services were terminated on the ground that, he was appointed only for the election work and that since the election work is over, he should not attend the work thereafter. It is the say of the petitioner that, thereafter, from the very select list, candidates who are juniors to the petitioner have been appointed to the post of peon. Initially, the petitioner had challenged the said action by way of filing Special Civil Application No.9990 of 2000 and this court disposed of the said writ petition on 13.11.2000 giving liberty to make a representation to the Collector, Surendranagar. While disposing of the said petition, liberty was also reserved to challenge the decision of the Collector, if the same was found to have been against the petitioner. Subsequently, the petitioner again made a representation on 27.11.2000 after the aforesaid order of the High Court. However, the Collector, by his order dated 21.12.2000 informed the petitioner that since the petitioner did not comply with the certain instructions and was accordingly guilty of misconduct, he was relieved from service at the relevant time. The said order is produced at page 48 Annexure-P to the petition. The petitioner has accordingly challenged the said decision by way of filing this petition.

#. Mr.Gandhi strongly submitted that looking to the order at Annexure-P it is clear that the decision, by which the services of the petitioner were terminated was not bona fide decision, but it was passed by way of penalty. He submitted that, even otherwise, the grounds mentioned in the said order are not correct. He pointed out that no opportunity was given at the relevant time to the petitioner to satisfy the authority that the allegations made against him were baseless.

#. Considering the documentary evidence on record, it is clear that, after terminating the services of the petitioner, juniors to him were appointed and they continued in service, i.e. those who are juniors to the petitioner in the select list, and the only reason for terminating the services of the petitioner was the aforesaid so-called misconduct. In view of the alleged misconduct, his name was deleted from the select list, and therefore, he was not continued in service. In my view, this fact as such is not disputed. Ms.Devani, learned AGP, submitted that because of the aforesaid misconduct, the name of the petitioner was deleted from the select list and he was removed from service.

#. Considering the aforesaid facts and circumstances of the case, I am of the opinion that once the petitioner was appointed to the post of peon, his services could not have been terminated without hearing him if the same is based on misconduct attributed to the petitioner. At least, the petitioner was required to be heard before taking such decision. It is required to be noted that the petitioner all throughout was not aware as to on what ground he was sent home. It is required to be noted that, initially, as per the termination order, his services were terminated on the ground that the election work was over and his services were no longer required. Thereafter, the petitioner had made various representations. In view of the aforesaid order of the Collector, it is clear that, real reason for terminating the services of the petitioner was the alleged misconduct, and therefore, at least the petitioner was required to be heard for taking such penal action against him. It is, therefore, clear that under the guise of simpliciter discharge on the ground that the work, for which the petitioner was appointed, no longer remains as such, the impugned order is passed which is penal in nature. However, considering the time gap, I requested the learned AGP to find out whether any vacant post of peon is available in the establishment of the Collector, Surendranagar and on the basis of the instruction dated 16.1.2002, at present 7 posts of peon are vacant in the establishment.

#. Considering the facts and circumstances of the case, I direct the Collector, Surendranagar to continue the petitioner by reinstating him to the post of peon at Collectorate office, Surendranagar. However, Mr.Gandhi fairly submitted that, the petitioner is not claiming the benefit of back-wages for the intervening period. He submitted that looking to the pathetic financial condition of the petitioner, he is ready to be absorbed even as a fresh recruit.

#. In view of the aforesaid concession given by Mr.Gandhi and considering the facts and circumstances of the case, as stated earlier, I direct the Collector, Surendranagar, to absorb the petitioner to the post of peon forthwith. However, the said appointment will be treated as fresh appointment and the petitioner will not be entitled to claim seniority on the basis of his past service or any other monetary benefit for the intervening period. The order to this effect may be passed within 15 days from the date of receipt of the writ of this court.

#. It is required to be noted that, while disposing of the earlier petition, this court has made certain observations in the order. Unfortunately, the said observations have not been taken into consideration while passing the impugned decision and very casual order is passed by the concerned officer. There is no reference regarding the observations made by this court in the said order. The authority is, therefore, directed that as and when the matter is sent back to the authority for reconsideration, the authority is expected to take into consideration seriously the observations made by the court. In future, if any such case is reported to this court, this court will have no option, but to take appropriate proceedings for contempt of the court against the erring officer. It is hoped that, in future, such lapses may not be committed and the observations made by the court in the judgment will be taken into consideration while disposing of the representation made by the concerned employee.

#. In view of what is stated above, the petition is allowed. Rule is made absolute accordingly to the aforesaid extent with no order as to costs. Direct service is permitted.

(P.B.Majmudar,J)
(pathan)